

TITLE 21. SECURITIES AND RETAIL FRANCHISING

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Titles of Regulations: **21VAC5-20. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer (amending 21VAC5-20-90, 21VAC5-20-110, 21VAC5-20-155, 21VAC5-20-160, 21VAC5-20-180).**

21VAC5-30. Securities Registration (amending 21VAC5-30-80).

21VAC5-40. Exempt Securities and Transactions (repealing 21VAC5-40-30).

21VAC5-45. Federal Covered Securities (adding 21VAC5-45-40).

21VAC5-80. Investment Advisors (amending 21VAC5-80-70, 21VAC5-80-90).

Statutory Authority: §§ 12.1-13 and 13.1-523 of the Code of Virginia.

Effective Date: December 1, 2017.

Agency Contact: Jude C. Richnafsky, Senior Examiner, Division of Securities and Retail Franchising, State Corporation Commission, 1300 East Main Street, 9th Floor, Richmond, VA 23219, mailing address: P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9415, FAX (804) 371-9911, or email jude.richnafsky@scc.virginia.gov.

Summary:

The regulatory action pertains to the administration and enforcement of the Virginia Securities Act and affects several regulatory chapters. Amendments to 21VAC5-20, Broker-dealers, Broker-dealer Agents and Agents of the Issuer, and 21VAC5-80, Investment Advisors, increase the registration and annual renewal filing fee to \$40 for broker-dealer agents, agents of the issuer, and investment advisor representatives. Amendments to 21VAC5-30, Securities Registration, update the Oil and Gas Programs statements of policy and add four statements of policy of the North American Securities Administrators Association, as follows: Promotional Shares, Loans & Other Material Transactions, Impoundment of Proceeds, and Electronic Offering Documents and Electronic Signatures. The action repeals the section of 21VAC5-40, Exempt Securities and Transactions, regarding the Regulation D, Rule 505 exemption due to the repeal of Rule 505 by the U.S. Securities and Exchange Commission (SEC) in October 2016. A new section in 21VAC5-45, Federal Covered Securities, establishes a notice filing requirement for issuers conducting a federal crowdfunding securities offering. In May of 2016, the SEC adopted the final rules for federal crowdfunding that preempted the requirement of the registration of these offerings. However, a state that is home to the principal place of business of the issuer or in which residents have purchased 50% or more of the offering amount may require a notice filing that contains all documents filed with the SEC together with a consent to service of process.

AT RICHMOND, NOVEMBER 20, 2017

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

CASE NO. SEC-2017-00034

Ex Parte: In the matter of
Adopting a Revision to the Rules
Governing the Virginia Securities Act

ORDER ADOPTING AMENDED RULES

By Order to Take Notice ("Order") entered on September 26, 2017,¹ all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of revisions to Chapters 20, 30, 40, 45, and 80 of Title 21 of the Virginia Administrative Code. On October 2, 2017, the Division of Securities and Retail Franchising ("Division") mailed and emailed the Order of the proposed rules to all interested persons pursuant to the Virginia Securities Act, § 13.1-501 et seq. of the Code of Virginia.² The Order described the proposed revisions and afforded interested persons an opportunity to file comments and request a hearing on or before November 1, 2017, with the Clerk of the Commission. The Order provided that requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments.

The Commission received one comment with regard to the proposed revisions. The comment did not provide a reference to the specific regulation being amended but generally was supportive of the registration fee increase (found in the revisions to Chapters 20 and 80). The Commission received no other comments to the proposed revisions.

No one requested a hearing on the proposed regulation revisions.

NOW THE COMMISSION, upon consideration of the proposed amendments to the proposed rules, the recommendation of the Division, and the record in this case, finds that the proposed amendments should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The proposed rules are attached hereto, made a part of hereof, and are hereby ADOPTED effective December 1, 2017.

(2) AN ATTESTED COPY hereof, together with a copy of the adopted rules, shall be sent by the Clerk of the Commission in care of Ronald W. Thomas, Director of the Division, who forthwith shall give further notice of the adopted rules by mailing or emailing a copy of this Order, to all interested persons.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the adopted rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) This case is dismissed from the Commission's docket, and the papers herein shall be placed in the filed for ended causes.

¹Doc. Con. Cen. No 170920181.

²The notice was published by the Virginia Registrar of Regulations on October 16, 2017. Doc. Con. Cen. No. 171040210.

Part II
Broker-Dealer Agents

21VAC5-20-90. Application for registration as a broker-dealer agent.

A. Application for registration as an agent of a FINRA member shall be filed on and in compliance with all requirements of CRD and in full compliance with the forms and regulations prescribed by the commission. The application shall include all information required by such forms.

An application shall be deemed incomplete for registration as a broker-dealer agent unless the applicant submits the following executed forms, fee, and information:

1. Form U4.
2. The statutory fee made payable to FINRA in the amount of ~~\$30~~ \$40.
3. Evidence in the form of a FINRA exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.
4. Any other information the commission may require.

B. Application for registration for non-FINRA member broker-dealer agents shall be filed on and in compliance with all requirements and forms prescribed by the commission.

An application shall be deemed incomplete for registration as a broker-dealer agent unless the applicant submits the following executed forms, fee, and information:

1. Form U4.
2. The statutory fee in the amount of ~~\$30~~ \$40. The check must be made payable to the Treasurer of Virginia.
3. Evidence in the form of a FINRA exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.
4. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-20-110. Renewals.

A. To renew the registration or registrations of its broker-dealer agent or agents, a FINRA member broker-dealer will be billed by CRD the statutory fee of ~~\$30~~ \$40 per broker-dealer agent. A renewal of registration or registrations shall be granted as a matter of course upon payment of

the proper fee or fees unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Code of Virginia.

B. A non-FINRA member broker-dealer shall file with the commission at its Division of Securities and Retail Franchising the following items at least 30 days prior to the expiration of registration.

1. Agents to be Renewed (Form S.D.4.A) accompanied by the statutory fee of ~~\$30~~ \$40 for each agent whose registration is to be renewed. The check must be made payable to the Treasurer of Virginia.
2. If applicable, Agents to be Canceled with clear records (Form S.D.4.B).
3. If applicable, Agents to be Canceled without clear records (Form S.D.4.C).

21VAC5-20-155. Limited Canadian broker-dealer agent registration.

A. An agent of a Canadian broker-dealer who has no office or other physical presence in the Commonwealth of Virginia may, provided the broker-dealer agent is registered under this section, effect transactions in securities as permitted for a broker-dealer registered under 21VAC5-20-85.

B. Application for registration as a broker-dealer agent under this section shall be filed with the commission at its Division of Securities and Retail Franchising or such other entity designated by the commission on and in full compliance with forms prescribed by the commission and shall include all information required by such forms.

C. An application for registration as a broker-dealer agent under this section shall be deemed incomplete for purposes of applying for registration unless the following executed forms, fee, and information are submitted to the commission:

1. An application in the form required by the jurisdiction in which the broker-dealer maintains its principal place of business.
2. Statutory fee payable to the Treasurer of Virginia in the amount of ~~\$30~~ \$40 United States currency pursuant to § 13.1-505 G of the Act.
3. Evidence that the applicant is registered as a broker-dealer agent in the jurisdiction from which it is effecting the transactions.
4. Any other information the commission may require.

D. A broker-dealer agent registered under this section shall:

1. Maintain his provincial or territorial registration in good standing;
2. Immediately notify the commission of any criminal action taken against him or of any finding or sanction imposed on him as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct.

E. A broker-dealer agent's registration under this section, and any renewal thereof, shall expire annually at midnight on the 31st day of December unless renewed in accordance with subsection F of this section.

F. To renew the registrations of its agents, a broker-dealer registered under this section shall file with the commission at its division the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer maintains its principal place of business, or if no such renewal application is required, the most recent application filed pursuant to subdivision C 1 of this section along with the statutory fee in the amount of ~~\$30~~ \$40 United States currency pursuant to § 13.1-505 G of the Act.

G. A Canadian broker-dealer agent registered under this section and acting in accordance with the limitations set out in this section is exempt from all other rules applicable to a broker-dealer agent except the anti-fraud provisions of the Act and the requirements set out in this section.

Part III
Agents of the Issuer

21VAC5-20-160. Application for registration as an agent of the issuer.

A. Application for registration as an agent of the issuer shall be filed on and in compliance with all requirements and forms prescribed by the commission.

B. An application shall be deemed incomplete for registration as an agent of the issuer unless the following executed forms, fee, and information are submitted:

1. Form U4.
2. The statutory fee in the amount of ~~\$30~~ \$40. The check must be made payable to the Treasurer of Virginia.
3. Evidence in the form of a FINRA exam report of passing within the two-year period immediately preceding the date of the application: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.
4. Any individual who meets the qualifications set forth in subdivision B 3 of this section and has been registered in any state jurisdiction requiring registration within the two-year period immediately preceding the date of the filing of an application shall not be required to comply with the examination requirement set forth in subdivision B 3 of this section, except that the Director of Securities and Retail Franchising may require additional examinations for any individual found to have violated any federal or state securities laws.
5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-20-180. Renewals.

An issuer, on behalf of its agent or agents, shall file with the commission at its Division of Securities and Retail Franchising at least 30 days prior to the expiration of registration a registration renewal form (Form S.D.4) accompanied by the statutory fee of ~~\$30~~ \$40 for each agent whose registration is to be renewed. The check must be made payable to the Treasurer of Virginia.

21VAC5-30-80. Adoption of ~~NASAA~~ North American Securities Administration Association, Inc. statements of policy.

The commission adopts the following ~~NASAA~~ North American Securities Administration Association, Inc. (NASAA) statements of policy that shall apply to the registration of securities in the Commonwealth. It will be considered a basis for denial of an application if an offering fails to comply with an applicable statement of policy. While applications not conforming to a statement

of policy shall be looked upon with disfavor, where good cause is shown, certain provisions may be modified or waived by the commission.

1. Options and Warrants, as amended March 31, 2008.
2. Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders, as amended March 31, 2008.
3. Real Estate Programs, as amended May 7, 2007.
4. Oil and Gas Programs, as amended May ~~7, 2007~~ 6, 2012.
5. Cattle-Feeding Programs, as adopted September 17, 1980.
6. Unsound Financial Condition, as amended March 31, 2008.
7. Real Estate Investment Trusts, as amended May 7, 2007.
8. Church Bonds, as adopted April 29, 1981.
9. Small Company Offering Registrations, as adopted April 28, 1996.
10. NASAA Guidelines Regarding Viatical Investment, as adopted October 1, 2002.
11. Corporate Securities Definitions, as amended March 31, 2008.
12. Church Extension Fund Securities, as amended April 18, 2004.
13. Promotional Shares, as amended March 31, 2008.
14. Loans and Other Material Transactions, as amended March 31, 2008.
15. Impoundment of Proceeds, as amended March 31, 2008.
16. Electronic Offering Documents and Electronic Signatures, as adopted May 8, 2017.

21VAC5-40-30. Uniform limited offering exemption. (Repealed.)

~~A. Nothing in this exemption is intended to relieve, or should be construed as in any way relieving, issuers or persons acting on their behalf from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of the Act.~~

~~In view of the objective of this section and the purpose and policies underlying the Act, this exemption is not available to an issuer with respect to a transaction which, although in technical compliance with this section, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this section.~~

~~Nothing in this section is intended to exempt registered broker-dealers or agents from the due diligence standards otherwise applicable to such registered persons.~~

~~Nothing in this section is intended to exempt a person from the broker-dealer or agent registration requirements of Article 3 (§ 13.1-504 et seq.) of Chapter 5 of Title 13.1 of the Code of Virginia, except in the case of an agent of the issuer who receives no sales commission directly or indirectly for offering or selling the securities and who is not subject to subdivision B 2 of this section.~~

~~B. For the purpose of the limited offering exemption referred to in § 13.1-514 B 13 of the Act, the following securities are determined to be exempt from the securities registration requirements of Article 4 (§ 13.1-507 et seq.) of Chapter 5 of Title 13.1 of the Code of Virginia.~~

~~Any securities offered or sold in compliance with the Securities Act of 1933, Regulation D (Reg. D), Rules 230.501-230.503 and 230.505 and which satisfy the following further conditions and limitations:~~

~~1. The issuer and persons acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that all persons who offer or sell securities subject to this section are registered in accordance with § 13.1-505 of the Act except in the case of an agent of the issuer who receives no sales commission directly or indirectly for offering or selling the securities and who is not subject to subdivision 2 of this subsection.~~

~~2. No exemption under this section shall be available for the securities of any issuer if any of the persons described in the Securities Act of 1933, Regulation A, Rule 230.262(a), (b), or (c) (17 CFR 230.262):~~

~~a. Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any state's securities law within five years prior to the beginning of the offering.~~

~~b. Has been convicted within five years prior to the beginning of the offering of a felony or misdemeanor in connection with the purchase or sale of a security or a felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.~~

~~c. Is currently subject to a state's administrative order or judgment entered by that state's securities administrator within five years prior to the beginning of the offering or is subject to a state's administrative order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five years prior to the beginning of the offering.~~

~~d. Is currently subject to a state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities.~~

~~e. Is currently subject to an order, judgment, or decree of a court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to an order, judgment or decree of any court of competent jurisdiction, entered within five years prior to the beginning of the offering, permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of a false filing with a state.~~

~~f. The prohibitions of subdivisions a, b, c and e of this subdivision shall not apply if the party subject to the disqualifying order, judgment or decree is duly licensed or registered to conduct securities related business in the state in which the administrative order, judgment or decree was entered against such party.~~

~~g. A disqualification caused by this subsection is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification, or the State Corporation Commission, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption under this section be denied.~~

~~3. The issuer shall file with the commission no later than 15 days after the first sale in this state from an offering being made in reliance upon this exemption:~~

~~a. A notice on Form D (17 CFR 239.500), as filed with the SEC.~~

~~b. A filing fee of \$250 payable to the Treasurer of Virginia.~~

~~4. In sales to nonaccredited investors, the issuer and persons acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that the~~

~~investment is suitable for the purchaser as to the purchaser's other security holdings and financial situation and needs.~~

~~5. Offers and sales of securities which are exempted by this section shall not be combined with offers and sales of securities exempted by another regulation or section of the Act; however, nothing in this limitation shall act as an election. The issuer may claim the availability of another applicable exemption should, for any reason, the securities or persons fail to comply with the conditions and limitations of this exemption.~~

~~6. In any proceeding involving this section, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.~~

~~C. The exemption authorized by this section shall be known and may be cited as the "Uniform Limited Offering Exemption."~~

21VAC5-45-40. Federal crowdfunding offerings.

A. An issuer that offers and sells securities in the Commonwealth in an offering exempt under federal Regulation Crowdfunding (17 CFR 227.100 through 17 CFR 227.503) and §§ 4(a)(6) and 18(b)(4)(c) of the Securities Act of 1933 (15 USC § 77a), and that either (i) has its principal place of business in the Commonwealth or (ii) sells 50% or greater of the aggregate amount of the offering to residents of the Commonwealth, shall file the following with the commission:

1. A completed Uniform Notice of Federal Crowdfunding Offering form or copies of all documents filed with the Securities and Exchange Commission (SEC); and
2. A consent to service of process on Form U-2 if not filing on the Uniform Notice of Federal Crowdfunding form.

B. If the issuer has its principal place of business in the Commonwealth, the filing required under subsection A of this section shall be filed with the commission when the issuer makes its initial Form C filing concerning the offering with the SEC. If the issuer does not have its principal place of business in the Commonwealth but residents of the Commonwealth have purchased 50% or greater of the aggregate amount of the offering, the filing required under subsection A of this section shall be filed when the issuer becomes aware that such purchases have met this threshold and in no event later than 30 days from the date of completion of the offering.

C. The initial notice filing is effective for 12 months from the date of the filing with the commission.

D. For each additional 12-month period in which the same offering is continued, an issuer conducting an offering under federal Regulation Crowdfunding may renew its notice filing by filing on or before the expiration of the notice filing a completed Uniform Notice of Federal Crowdfunding Offering form marked "renewal" or a cover letter or other document requesting renewal.

E. An issuer may increase the amount of securities offered in the Commonwealth by submitting a completed Uniform Notice of Federal Crowdfunding Offering form marked "amendment" or other document describing the transaction.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (21VAC5-45)

Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972 (rev. 2/2012)

Uniform Consent to Service of Process, Form U-2 (rev. 7/2017)

Uniform Notice of Regulation A - Tier 2 Offering (undated, filed 10/2016)

Form NF - Uniform Investment Company Notice Filing (4/1997)

Uniform Notice of Federal Crowdfunding Offering, Form U-CF (undated, filed 9/2017)

Part II

Investment Advisor Representative Registration, Expiration, Updates and Amendments, Termination, and Changing Connection from One Investment Advisor to Another

21VAC5-80-70. Application for registration as an investment advisor representative.

A. Application for registration as an investment advisor representative shall be filed in compliance with all requirements of CRD and in full compliance with forms and regulations prescribed by the commission. The application shall include all information required by such forms.

B. An application shall be deemed incomplete for registration as an investment advisor representative unless the following executed forms, fee, and information are submitted:

1. Form U4.
2. The statutory fee made payable to FINRA in the amount of ~~\$30~~ \$40.
3. Evidence of passing: (i) the Uniform Investment Adviser Law Examination, Series 65; (ii) the Uniform Combined State Law Examination, Series 66, and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the commission, the Director of the Division of Securities and Retail Franchising designates.
4. All individuals listed on Part 1 of Form ADV in Schedule A and Item 2. A. of Part 1B as having supervisory responsibilities of the investment advisor shall take and pass the examinations as required in subdivision 3 of this subsection, and register as a representative of the investment advisor.
5. Any other information the commission may require.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21VAC5-80-90. Renewals.

To renew the registration of its investment advisor representatives, an investment advisor or federal covered advisor will be billed by IARD the statutory fee of ~~\$30~~ \$40 per investment advisor representative. A renewal of registration shall be granted as a matter of course upon payment of the proper fee or fees unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Act.